



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Civil Case 1473 of 2005

ALTHUMANI RAMADHANI MKOMWA PLAINTIFF

VERSUS

SCANDINAVIA EXPRESS SERVICES LTD DEFENDANTS

RULING

ON REVIEW OF COURTS JUDGMENT

APPLICATION NOTICE OF MOTION 4.4.2008

1. Background

1. The applicant is a paraplegic, a victim of a self road traffic accident as a passenger in his employer's vehicle.
2. The court gave judgment in favour of the plaintiff against the defendant who failed to enter appearance or file defence at Ksh.1.853,000/-.
3. The court rejected the award claim of Loss of earning and Loss of further earning that amounted to Ksh.144,000/- and Ksh.720,000/- respectively.
4. The plaintiff decree holder filed application dated 4 April 2007 seeking prayers to Review this court judgment on the two claims not awarded by court.
5. The defendant having now entered appearance after judgment, were served with the application but failed to attend court. The application was heard exparte

II: Application 4 April 2008

6. It is the applicant's view that this court erred in not awarding the loss of future earning and loss of earning. This is due to the proceedings that did not bring out the fact that currently the plaintiff was not at all employed after the accident. He had no employment and thus the award be given to him.

III: Opinion

7. The reasons why this court did not grant the award and claim made was explained in the judgment namely, the plaintiff was to have produced his payslip and a further letter to prove that he was on half pay then finally termination of his employment. No pay slip or letter was produced to prove the actual sum being paid as salary. This was merely a **verba** evidence given to court.
8. The plaintiff is Tanzanian and his earnings must have been in a different currency and country. I in fact used the Kenya currency of Ksh.6,000/- which is Tanzanian Ksh.60,000/- and not the Ksh.11,000/- he may have been seeking.

Special Damages must not only be pleaded but must be particularized and proved strictly. I believe the nominal damages I proposed was sufficient **but** this claim was never proved.

I accordingly reject this application. The defendants were absent there will be no orders as to costs.

DATED THIS 17TH DAY OF JUNE 2008 AT NAIROBI.

M.A. ANG'AWA

JUDGE

G.O. Jaoko instructed by Jaoko & Co. Advocates for the plaintiff/applicant – present

Defendant is unrepresented - absent